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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,897	03/24/2004	Rong Xiang	TSRI 874.1	6550

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EXAMINER	
SHEN, WU CHENG WINSTON	
ART UNIT	PAPER NUMBER
1632	
MAIL DATE	DELIVERY MODE
02/23/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/807,897	XIANG ET AL.	
	Examiner	Art Unit	
	WU-CHENG Winston SHEN	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: See *Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,26,28 and 53*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 3. NOTE: Claim 1 has been proposed to be amended to change the scope of the invention in terms of (i) specific strain of the attenuated Salmonella typhimurium vector comprises and aroA - dam -, (ii) origin of survivin protein, and (iii) type of patient to be treated. The proposed amendments of claim 1 add the limitation "the attenuated Salmonella typhimurium vector comprises and aroA - dam -" render the scope of Salmonella typhimurium vector more narrow. However, the proposed amendments of claim 1 delete human in limitations "human patient" and "human survivin" and render the scope of claim 1 broader in terms of types of "patient" and "survivin". These amendments raise new issues that would require further consideration and/or search for prior arts.

Continuation of 11. does NOT place the application in condition for allowance because:

(i) Applicant's arguments have failed to overcome the rejection of claims 1, 26, and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(ii) Applicant's arguments have failed to overcome the rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Haupt et al. (Haupt et al., The potential of DNA vaccination against tumor-associated antigens for anti-tumor therapy, Exp Biol Med (Maywood). 227(4):227-37, 2002) in view of Gordan et al. (Gordan et al. Universal tumor antigens as targets for immunotherapy, Cytotherapy, 4(4):317-27, 2002), Andersen et al. (Andersen et al., Spontaneous cytotoxic T-cell responses against survivin-derived MHC class I-restricted T-cell epitopes in situ as well as ex vivo in cancer patients, Cancer Res. 61(16):5964-8, 2001), Luther et al. (Luther et al., Differing activities of homeostatic chemokines CCL19, CCL21, and CXCL12 in lymphocyte and dendritic cell recruitment and lymphoid neogenesis, J Immunol. 169(1):424-33, 2002), and Lu et al. (US 5,733,760, issued 03/31/1998) because Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(iii) Applicant's arguments have failed to overcome the rejection of claim 26 under 35 U.S.C. 103(a) as being unpatentable over Haupt et al. (Haupt et al., The potential of DNA vaccination against tumor-associated antigens for antitumor therapy, Exp Biol Med (Maywood). 227(4):227-37, 2002) in view of Gordan et al. (Gordan et al. Universal tumor antigens as targets for immunotherapy, Cytotherapy, 4(4):317-27, 2002), Andersen et al. (Andersen et al., Spontaneous cytotoxic T-cell responses against survivin-derived MHC class I-restricted T-cell epitopes in situ as well as ex vivo in cancer patients, Cancer Res. 61(16):5964-8, 2001), Luther et al. (Luther et al., Differing activities of homeostatic chemokines CCL19, CCL21, and CXCL12 in lymphocyte and dendritic cell recruitment and lymphoid neogenesis, J Immunol. 169(1):424-33, 2002), and Lu et al. (US 5,733,760, issued 03/31/1998), as applied to claim 1 above, and further in view of Bennett et al. (Bennett et al. WO200157059-A1 and U.S. Patent No. 6,335,194, SEQ ID No: 10, columns 27, 53-55) because Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(iv) Applicant's arguments have failed to overcome the rejection of claim 28 under 35 U.S.C. 103(a) as being unpatentable over Haupt et al. (Haupt et al., The potential of DNA vaccination against tumor-associated antigens for antitumor therapy, Exp Biol Med (Maywood). 227(4):227-37, 2002) in view of Gordan et al. (Gordan et al. Universal tumor antigens as targets for immunotherapy, Cytotherapy, 4(4):317-27, 2002), Andersen et al. (Andersen et al., Spontaneous cytotoxic T-cell responses against survivin-derived MHC class I-restricted T-cell epitopes in situ as well as ex vivo in cancer patients, Cancer Res. 61(16):5964-8, 2001), Luther et al. (Luther et al., Differing activities of homeostatic chemokines CCL19, CCL21, and CXCL12 in lymphocyte and dendritic cell recruitment and lymphoid neogenesis, J Immunol. 169(1):424-33, 2002), and Lu et al. (US 5,733,760, issued 03/31/1998), as applied to claim 1 above, and further in view of Tanabe et al. (Tanabe et al., direct submission, submitted to Genetics Institute, 87 Cambridge Park Drive, Cambridge, MA 02140, USA, on 03-JUN-1997, direct submission of DNA sequences of CCL21) because Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(v) Applicant's arguments have failed to overcome the rejection of claim 53 under 35 U.S.C. 103(a) as being unpatentable over Haupt et al. (Haupt et al., The potential of DNA vaccination against tumor-associated antigens for antitumor therapy, Exp Biol Med (Maywood). 227(4):227-37, 2002) in view of Gordan et al. (Gordan et al. Universal tumor antigens as targets for immunotherapy, Cytotherapy, 4(4):317-27, 2002), Andersen et al. (Andersen et al., Spontaneous cytotoxic T-cell responses against survivin-derived MHC class I-restricted T-cell epitopes in situ as well as ex vivo in cancer patients, Cancer Res. 61(16):5964-8, 2001), Luther et al. (Luther et al., Differing activities of homeostatic chemokines CCL19, CCL21, and CXCL12 in lymphocyte and dendritic cell recruitment and lymphoid neogenesis, J Immunol. 169(1):424-33, 2002), and Lu et al. (US 5,733,760, issued 03/31/1998), as applied to claim 1 above, and further in view of Bennett et al. (Bennett et al. WO200157059-A1 and U.S. Patent No. 6,335,194, SEQ ID No: 10, columns 27, 53-55), and Tanabe et al. (Tanabe et al., direct submission, submitted to Genetics Institute, 87 Cambridge Park Drive, Cambridge, MA 02140, USA, on 03-JUN-1997, direct submission of DNA sequences of CCL21) because Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

/Wu-Cheng Winston Shen/
Patent Examiner, Art Unit 1632